



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2014-0903; FRL-9924-02-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; State Boards Requirements; Infrastructure Requirements for the 2008 Ozone, 2010 Nitrogen Dioxide, and 2010 Sulfur Dioxide National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the West Virginia State Implementation Plan (SIP). The SIP revision addresses the State Boards requirements for all criteria pollutants of the National Ambient Air Quality Standards (NAAQS). EPA is also approving a related infrastructure element from the West Virginia February 21, 2012 SIP submittal for the 2008 ozone (O₃) NAAQS, the December 13, 2012 SIP submittal for the 2010 nitrogen dioxide (NO₂) NAAQS, and the July 1, 2013 SIP submittal for the 2010 sulfur dioxide (SO₂) NAAQS. EPA is approving this SIP revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on **[insert date 60 days after publication in the Federal Register]** without further notice, unless EPA receives adverse written comment by **[insert date 30 days after publication in the Federal Register]**. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2014-0903 by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. E-mail: powers.marilyn@epa.gov.
- C. Mail: EPA-R03-OAR-2014-0903, Marilyn Powers, Acting Associate Director, Office of Air Program Planning, Air Protection Division, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2014-0903. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact

information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, WV 25304.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, (215) 814-5787, or by e-mail at schmitt.ellen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 128 of the CAA requires SIPs to include certain requirements regarding State Boards; section 110(a)(2)(E)(ii) of the CAA also references these requirements. Section 128(a) requires SIPs to contain provisions that: 1) Any board or body which approves permits or enforcement orders under the CAA shall have at least a majority of its members represent the public interest and not derive any significant portion of their income from persons subject to permits or

enforcement orders under the CAA; and 2) any potential conflict of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed. The requirements of section 128(a)(1) are not applicable to West Virginia because it does not have any board or body which approves air quality permits or enforcement orders. The requirements of section 128(a)(2), however, are applicable because the head of the West Virginia Department of Environmental Protection (WVDEP), or his/her designees, approve permits or enforcement orders within West Virginia.

On July 24, 2014, the State of West Virginia, through WVDEP, submitted a SIP revision to address the requirements of section 128 for all criteria pollutants of the NAAQS in relation to State Boards. The SIP revision consists of relevant portions of West Virginia Code 6B of the West Virginia Governmental Ethics Act for inclusion into the West Virginia SIP.

In addition, this rulemaking action approves the section 110(a)(2)(E)(ii) infrastructure element from the following West Virginia infrastructure SIP submittals for each identified NAAQS: February 21, 2012 for the 2008 O₃ NAAQS, December 13, 2012 for the 2010 NO₂ NAAQS, and July 1, 2013 for the 2010 SO₂ NAAQS (collectively, the Three Submittals). For the Three Submittals, EPA had previously approved those submittals as addressing certain requirements in section 110(a)(2), and specifically stated EPA would take later separate action, for each of the NAAQS addressed, on section 110(a)(2)(E)(ii) which requires a state's SIP to meet the requirements of CAA section 128. *See* 79 FR 3504 (January 22, 2014), 79 FR 19001 (April 7, 2014), and 79 FR 62022 (October 16, 2014).

II. Summary of SIP Revision

This rulemaking action approves certain statutory provisions for the West Virginia SIP submitted

by WVDEP to meet the requirements of section 128 of the CAA. Upon meeting the requirements of section 128, West Virginia will also meet the requirements of section 110(a)(2)(E)(ii) of the CAA for all criteria pollutants of the NAAQS in relation to State Boards.

WVDEP submitted these statutory provisions for inclusion in the West Virginia SIP to meet requirements of section 128. These West Virginia statutory provisions are in the West Virginia Governmental Ethics Act set forth in West Virginia Code 6B, specifically in W.V. Code section 6B-1-3 (Definitions), section 6B-2-6 (Financial disclosure statement; filing requirements), and section 6B-2-7 (Financial disclosure statement; contents). In the July 24, 2014 SIP submittal, WVDEP states that any potential conflicts of interest by the head of an executive agency that approves permits or enforcement orders must be disclosed pursuant to the West Virginia Governmental Ethics Act found in W.V. Code sections 6B-1-3, 6B-2-6, and 6B-2-7. In order to meet the requirements of CAA sections 128 and 110(a)(2)(E)(ii), West Virginia is seeking to incorporate into the SIP these relevant provisions of the West Virginia Code.

III. The State Boards Requirements and EPA's Analysis of West Virginia's Submittal

As previously stated, section 128 of the CAA requires that SIPs include provisions which provide: 1) Any board or body which approves permits or enforcement orders under the CAA have at least a majority of its members represent the public interest and not derive any significant portion of their income from persons subject to permits or enforcement orders under the CAA; and 2) any potential conflict of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

The requirements of section 128(a)(1) are not applicable to West Virginia because it does not have any board or body which approves air quality permits or enforcement orders. To address

requirements in section 128(a)(2), West Virginia submitted for incorporation into its SIP the relevant portions of the West Virginia Code 6B, specifically W.V. Code sections 6B-1-3 (Definitions), 6B-2-6 (Financial disclosure statement; filing requirements), and 6B-2-7 (Financial disclosure statement; contents).

According to WVDEP, the Secretary of WVDEP, or his/her designees, approve all CAA permits and enforcement orders in West Virginia. West Virginia Code 6B at W.V. Code section 6B-2-6 and section 6B-2-7 require secretaries of departments, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads to disclose annually relevant information including certain direct and indirect financial interests, employment, business interests, income and sources of income, financial liabilities, participation on boards of directors, and gifts. The West Virginia Code at W.V. Code section 6B-1-3 also contains relevant definitions for terms used in W.V. Code sections 6B-2-6 and 6B-2-7. EPA finds these West Virginia statutory provisions provide for adequate disclosure of potential conflicts of interest. This SIP revision will incorporate existing West Virginia law into the SIP and demonstrates that West Virginia complies with the requirements of sections 128 for all NAAQS pollutants through the relevant sections of West Virginia Code 6B. Thus, EPA finds the July 24, 2014 SIP submittal addresses the relevant State Boards requirements in section 128 for West Virginia.

IV. Infrastructure Requirements and EPA's Analysis of West Virginia's Submittals

Whenever new or revised NAAQS are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements including, but not limited to, regulatory structure, monitoring,

modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. In particular, the infrastructure requirements of section 110(a)(2)(E)(ii) require that each state's SIP meet the requirements of section 128.

On the following dates, and for the applicable NAAQS, West Virginia submitted infrastructure SIP submittals to meet the requirements of CAA section 110(a)(2): February 21, 2012 for the 2008 O₃ NAAQS, December 13, 2012 for the 2010 NO₂ NAAQS, and July 1, 2013 for the 2010 SO₂ NAAQS.

EPA has approved these submittals as meeting certain requirements or elements in section 110(a)(2) for the applicable NAAQS but has stated in each of these approvals that EPA would take later, separate action for requirements in section 110(a)(2)(E)(ii). For a discussion of EPA's approach to reviewing infrastructure SIPs, including our longstanding interpretation of requirements for section 110(a)(1) and (2), our interpretation that the CAA allows states to make multiple SIP submissions separately addressing infrastructure SIP elements in section 110(a)(2) for a specific NAAQS, and our interpretation that EPA has the ability to act on separate elements of 110(a)(2) for a NAAQS in separate rulemaking actions, see our proposed approvals of West Virginia's infrastructure SIPs for the 2008 O₃ NAAQS and the 2010 NO₂ and SO₂ NAAQS. *See* 78 FR 39650 (July 2, 2013) (2008 O₃ NAAQS), 78 FR 65593 (November 1, 2013) (2010 NO₂ NAAQS), and 79 FR 27524 (May 14, 2014) (2010 SO₂ NAAQS).

With the July 24, 2014 SIP submittal from West Virginia, EPA finds that the West Virginia SIP adequately addresses all requirements in CAA section 128 and section 110(a)(2)(E)(ii). Thus, EPA is now approving the section 110(a)(2)(E)(ii) infrastructure element for the Three

Submittals for the 2008 O₃, 2010 NO₂, and 2010 SO₂ NAAQS.

V. Final Action

EPA is approving the July 24, 2014 West Virginia SIP revision that addresses the requirements of sections 128 and 110(a)(2)(E)(ii) of the CAA for all criteria pollutants of the NAAQS. EPA is also specifically approving West Virginia's February 21, 2012 SIP revision for the 2008 O₃ NAAQS, the December 13, 2012 SIP revision for the 2010 NO₂ NAAQS, and the July 1, 2013 SIP revision for the 2010 SO₂ NAAQS as addressing the requirements in section 110(a)(2)(E)(ii) of the CAA. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's Federal Register, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on **[insert date 60 days from date of publication in the Federal Register]** without further notice unless EPA receives adverse comment by **[insert date 30 days from date of publication in the Federal Register]**. If EPA receives adverse comment, EPA will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the West Virginia Code sections described in the proposed amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

VII. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This action, approving West Virginia submissions meeting section 128 and approving the infrastructure element E(ii) for three NAAQS submittals, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 12, 2015.

William C. Early, Acting
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart XX— West Virginia

2. In § 52.2520:

a. Paragraph (c) is amended by adding a table entitled “EPA-Approved Regulations and Statutes” after the existing table; and

b. The table in paragraph (e) is amended by revising the entries for:

i. Section 110(a)(2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS,

ii. Section 110(a)(2) Infrastructure Requirements for the 2010 nitrogen dioxide NAAQS, and Section 110(a)(2) Infrastructure Requirements for the 2010 1-Hour Sulfur Dioxide NAAQS.

The addition and revisions read as follows:

§ 52.2520 Identification of plan.

* * * *

(c) * * *

EPA-Approved Regulations and Statutes

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
West Virginia Code 6B – Ethics Standards and Financial Disclosure				
6B-1-3	Definitions	10/1/2014	[Insert Federal Register publication date] [Insert Federal Register citation]	Addresses CAA section 128
6B-2-6	Financial disclosure statement; filing requirements	10/1/2014	[Insert Federal Register publication date]	Addresses CAA section 128

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
			<u>date]</u> <u>[Insert Federal Register citation]</u>	
6B-2-7	Financial disclosure statement; contents	10/1/2014	<u>[Insert Federal Register publication date]</u> <u>[Insert Federal Register citation]</u>	Addresses CAA section 128

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Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	* *	* *	* *	
Section 110(a)(2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS	Statewide	8/31/11, 2/17/12 2/17/12 7/24/14	10/17/12, 77 FR 63736 4/7/2014, 79 FR 19001 <u>[Insert Federal Register publication date]</u> <u>[Insert</u>	Approval of the following PSD-related elements or portions thereof: 110(a)(2)(C), (D)(i)(II), and (J), except taking no action on the definition of “regulated NSR pollutant” found at 45CSR14 section 2.66 only as it relates to the requirement to include condensable emissions of particulate matter in that definition. See §52.2522(i). This action addresses the following CAA elements, or portions thereof: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). Addresses CAA element 110(a)(2)(E)(ii)

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
			<u>Federal Register citation]</u>	
* * * *				
Section 110(a)(2) Infrastructure Requirements for the 2010 nitrogen dioxide NAAQS	Statewide	12/13/12 7/24/14	1/22/14, 78 FR 3504 <u>[Insert Federal Register publication date]</u> <u>[Insert Federal Register citation]</u>	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof. Addresses CAA element 110(a)(2)(E)(ii)
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Section 110(a)(2) Infrastructure Requirements for the 2010 1-Hour Sulfur Dioxide NAAQS	Statewide	6/25/13 7/24/14	10/16/14, 79 FR 62035 <u>[Insert Federal Register publication date]</u> <u>[Insert Federal Register citation]</u>	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C) (enforcement and minor new source review), (D)(ii), (E)(i) and (iii), (F), (G), (H), (J) (consultation, public notification, and visibility protection), (K), (L), and (M). Addresses CAA element 110(a)(2)(E)(ii)
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3/9/2015]